SUPREME COURT, U. S.

445

FILED
JUL 24 1970
E. ROBERT SEAVER, CLERK

No. ———

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

———

JAMES H. COOGAN,

Petitioner,

vs.

CINCINNATI BAR ASSOCIATION,

Respondent.

———

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

———

OTTO F. PUTNICK
911 First National Bank Bldg.
Cincinnati, Ohio 45202
Attorney for Petitioner

COURT INDEX PRESS, INC. — Law Printers — 809 Walnut Street, Cincinnati, Ohio 45202

INDEX

Brief

	Page
Petition for Writ of Certiorari	1
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Constitution of United States	3
Ohio Statute	3-4
Statement of Case	4
How Federal Question is Presenced And Reason for Granting Writ	6
Conclusion	9

Appendix

A. Opinion of Supreme Court of Ohio	11
B. Order Denying Rehearing	16
C. Findings of Fact and Recommendation of Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio	19
D. Petitioner's Objections to Findings of Fact and Recommendation	30

Citations

Cohen v. Hurley, 366 U.S. 117, 122 (1961)	7
Curry v. McConless, 307 U.S. 357	7
Hanfelt v. U.S., (CCA 8), 53 F (2d) 811	9
Ex Parte Lange, 18 Wall (85 U.S.) 163	8
National Association for the Advancement of Colored People v. Button, 371 U.S. 415, 439 (1963)	7
People v. Hermes, 73 Cal App (2d series) 947, 168 Pac (2d) 44	8
Poffenbarger v. U.S., (CCA 8), 20 F (2d) 42	7
Raphael Koningsberg v. State Bar of California, 366 U.S. 36	7
In re Ruffalo, 390 U.S. 544, 551 (1968)	6
Sadler v. Jester, (DC - Tex), 46 F Supp 737	7
Samuel Spevach v. Solomon A. Klein, 385 U.S. 511	7
U. S. v. Barracata, (DC - NY), 45 F Supp 38	9
U. S. v. Douglas, (CCA 7), 155 F (2d) 894	9

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. ———

JAMES H. COOGAN,

Petitioner,

vs.

CINCINNATI BAR ASSOCIATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio, entered in the above-entitled case on March 4, 1970, and as to which rehearing was denied on April 29, 1970.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Ohio, printed in Appendix A, attached hereto, is reported at 21 Ohio St. 2d 147. The Order of the Supreme Court of Ohio denying Petitioner's Petition for a Rehearing is unreported but printed in Appendix B hereto. The Findings of Fact and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio are unreported but printed in Appendix C hereto. Petitioner's Objections to Findings of Fact and Recommendation are unreported but are printed in Appendix D hereto.

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on March 4, 1970. A timely petition for rehearing was denied on April 29, 1970. The judgment is final and from the highest court of the state. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3), since petitioner claims rights, privileges, and immunities under the Constitution and statutes of the United States.

QUESTIONS PRESENTED

1. Does the agreed suspension of a lawyer for a six month period, and the resulting agreement of the Cincinnati Bar Association that the complaints against said lawyer have been dismissed, all of which were performed under color of authority of Rule XVIII of the Rules of Practice of the Supreme Court of Ohio, and a later indefinite suspension of the same lawyer by the Supreme Court of Ohio on these identical complaints constitute double jeopardy as precluded by the Fifth and Fourteenth Amendments to the Constitution of the United States?

2. Does the admission of an affidavit into evidence presented to the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, upon which evidence said Board of Commissioners based their Findings of Fact and Recommendation to indefinitely suspend a lawyer from the practice of law, deny said lawyer's right to due process of law as provided for by the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States, when said lawyer had no knowledge that the affidavit was being taken, or that it had been taken, and said affidavit was not acted upon or offered into evidence until after the death of the affiant?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV, 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, Amendment V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Rules of Practice of the Supreme Court of Ohio, Rule

XVIII paragraph (4) :-Application of Rule; authority and Duty of Local Committees. From and after the effective date of this rule, all proceedings with regards to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law and judges; all proceedings for the discipline of such attorneys and counselors at law, persons under suspension for an indefienite period or disbarred from the practice of law, and judges; and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provisions of this rule. Any committee authorized by any regularly organized bar association or by the Ohio State Bar Association shall investigate any matter referred to it or which comes to its attention and may cause a complaint to be filed pursuant to this rule in cases where misconduct, contempt, or mental illness is found; *provided, however, that nothing herein shall effect disciplinary procedures of any regularly organized bar association under the provisions of its constitution not inconsistent with this rule.* . . . (Emphasis added)

STATEMENT OF THE CASE

On October 9, 1967, Respondent filed with the Board of Commissioners of Grievances and Discipline of the Supreme Court of Ohio a complaint against petitioner naming two counts of alleged grievances against petitioner. A hearing on this complaint was scheduled for January 24, 1968, but was continued by the Cincinnati Bar Association. A new hearing was scheduled for June 17, 1968. However, on June 10, 1968, Respondent Cincinnati Bar Association asked for a continuance on the hearing in the hope that the matter could be resolved on the local level. The hearing set for June 17, 1968 was continued indefinitely.

On August 6, 1968, petitioner entered into an agreed suspension from the practice of law for a period of six months. As part of this agreement the Cincinnati Bar Association informed petitioner that the complaint against him had been dismissed. This agreement was confirmed in writing and a copy of same is printed below (Appendix D) as an attachment to petitioner's objections to the Findings of Fact and Recommendations of the Board of Commisioners on Grievances and Discipline.

Petitioner complied with this agreement, and surrendered his license to practice law to the Cincinnati Bar Association. On or about February 15, 1969, petitioner's six month suspension having been completed, he met with his counsel and Robert M. Dennis, Esq., Chairman of the Grievance Committee of the Cincinnati Bar Association. At this time Mr. Dennis returned to petitioner his license to practice law in Ohio and confirmed the proposition that the complaint against petitioner had been dismissed.

The Cincinnati Bar Association then contacted the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio and requested advice on how to dispose of their complaint against petitioner. The Board advised the Cincinnati Bar Association to proceed to a hearing on the complaint and to fully process the case to a conclusion.

On July 8, 1969, a hearing on the complaint which had allegedly been dismissed was held before a panel of three members of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio. In this hearing the Panel admitted into evidence the affidavit of one Lawrence W. Hunt, Esq., Referee of the Hamilton County Probate Court. Said affidavit was admitted over the objections of petitioner's counsel. Petitioner had no knowledge that said affidavit had been taken, and Mr.

Hunt had passed away before the affidavit was offered into evidence. That the Panel relied on the facts contained in Mr. Hunt's affidavit is evidenced in their Findings of Fact and Recommendation printed below in Appendix C.

The Board of Commissioners recommended to the Supreme Court of Ohio that the petitioner be suspended indefinitely from the practice of law. Petitioner timely filed objections to the Findings of Fact and Recommendation of the Board and attached thereto a copy of his agreement with the Cincinnati Bar Association (Appendix D). Petitioner's objections were overruled and he was ordered suspended indefinitely from the practice of law.

A petition for a rehearing was then timely filed and denied, and petitioner was granted a stay of execution pending appeal to this honorable Court.

HOW FEDERAL QUESTION IS PRESENTED AND REASONS FOR GRANTING WRIT.

1. This Court has held that disbarment proceedings are "proceedings of a quasi-criminal nature." *In re Ruffalo*, 390 U.S. 544, 551 (1968). In the case at bar, petitioner was induced to enter into a suspension from the practice of law for a six month period as punishment for the two grievances alleged in the complaint against him. He was told that as a result of accepting this punishment the complaint against him had been dismissed. The Cincinnati Bar Association, which, under Rule XVIII of the Rules of Practice of the Supreme Court of Ohio, has authority to effect its own disciplinary procedures, so penalized petitioner and agreed to dismiss the complaint against him. At a later date the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, another duly authorized panel for the disciplining of Ohio lawyers, instructed the Cincinnati Bar Association to pro-

ceed on the same complaint against petitioner. This proceeding resulted in petitioner's being punished twice for the identical alleged offense. Petitioner was thereby subjected to double jeopardy and denied due process of law. In *Samuel Spevack* v. *Solomon A. Klein*, 385 U.S. 511, this Court held that due process of the Fifth and Fourteenth Amendments must be followed in suspending or revoking a professional license. This Court has held further that no person shall be deprived of life, liberty, or property without due process of law, as applied to the denial or suspension of a professional license. *Raphael Koningsberg* v. *State Bar of California*, 366 U.S. 36.

"A State may not, under guise of prohibiting professional misconduct, ignore constitutional rights." *National Association for the Advancement of Colored People* v. *Button*, 371 U.S. 415, 439 (1963). In addition, this Court has referred to "the undeniably correct premise that a State may not arbitrarily refuse a person permission to practice law. . . ." *Cohen* v. *Hurley*, 366 U.S. 117, 122 (1961). The decision of the Supreme Court of Ohio is clearly contrary to these premises.

It is an undeniable principle of law that the Fourteenth Amendment operates so as to extend to citizens and residents of the states, the same protection against arbitrary state action affecting their lives, liberty or property as is offered by the Fifth Amendment against similar wrongs by the nation. *Curry* v. *McConless*, 307 U.S. 357, *Sadler* v. *Jester*, (DC-Tex), 46 F Supp 737. It has also been held, as in the case at bar, that the test is not whether defendant has been tried for the same act, but whether he has been put in jeopardy for the same offense. *Poffenbarger* v. *U. S.*, (CCA 8), 20 F (2d) 42.

Indeed, the principle and spirit of the Fifth Amendment and its provision against double jeopardy have prevailed since its adoption. It is very clearly the spirit of the Con-

stitution to prevent a second punishment under judicial proceedings for the same crime, so far as the common law gave that protection. *Ex parte Lange*, 18 Wall (85 U.S.) 163. It is under color of this principle and these decisions that petitioner seeks relief.

2. The Cincinnati Bar Association took the affidavit of Lawrence W. Hunt, Esq., Referee of the Probate Court of Hamilton County, Ohio, on January 4, 1967. Although Mr. Hunt's unstable emotional condition and his several hospitalizations for psychiatric reasons were well known to most members of the Cincinnati Bar Association at that time, no effort was made to notify Petitioner of the taking of the affidavit. Indeed Petitioner had no knowledge that Mr. Hunt's affidavit had been taken until it was offered and admitted into evidence on July 8, 1969, nearly a year and one-half after it was taken, over the noted objection of Petitioner's counsel. Petitioner contends all of this was done in deprivation of rights afforded him in Amendment VI to the Constitution of the United States, since it undeniably denied Petitioner his right to be confronted by a witness used against him in a criminal proceeding, and his right to cross-examination of this witness. The object of the provision for confrontation is to provide a person who is being tried a full opportunity for cross-examination. *People* v. *Hermes*, 73 Cal App (2d series) 947, 168 Pac (2d) 44.

It must be noted that proceedings against Petitioner were twice continued by the Cincinnati Bar Association during Mr. Hunt's lifetime. The second continuance was for an indefinite period.

However, only three months after Mr. Hunt died at his own hands on March 16, 1969, proceedings against Petitioner were again taken up, and on June 25, 1969, a new hearing was set for July 8, 1969. Thus, through no omission or fault of his own, Petitioner was unques-

tionably denied his right to confrontation and cross-examination. The United States Circuit Court of Appeals for the Seventh Circuit has held that the admission of an affidavit in a criminal proceeding is reversible error where the witness is not subjected to cross-examination. *U.S.* v. *Douglas*, (CCA 7), 155 F (2d) 894.

That the Panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered the affidavit in question is undenied, as stated in their Findings of Fact and Recommendation printed below. All evidence of Petitioner's dealings with the Hamilton County Probate Court in the controversy in question is hearsay, clearly in violation of the Sixth Amendment to the Constitution of the United States. *Hanfelt* v. *U.S.*, (CCA 8), 53 F (2d) 811.

The right of confrontation means the right of the accused to hear the witness testify against him and to cross-examine him. It is a common law right which was carried into the Constitution by this (the Sixth) Amendment. *U. S.* v. *Barracata*, (DC - NY), 45 F Supp 38. It is a right blatently denied Petitioner in the case at bar.

CONCLUSION

The case at bar is of great importance and worthy of Supreme Court intervention in that an indefinite suspension from the practice of law is tantamount to permanent disbarment in the State of Ohio. A search of the records will disclose the fact that very few lawyers, once suspended indefinitely, are ever re-admitted to the practice of law.

Petitioner submits that he has been denied due process of law as provided for by the Fourteenth Amendment to the Constitution of the United States. He has been subjected to double jeopardy as prohibited by the Fifth Amendment

to the Constitution of the United States. He has been denied the right to be confronted by and to cross-examine a witness against him, a right guaranteed by the Sixth Amendment to the Constitution of the United States.

Because the Supreme Court of Ohio has erroneously allowed such violations of Petitioner's constitutional rights and privileges, this Petition for a Writ of Certiorari should be granted and the Supreme Court of Ohio reversed.

Respectfully submitted,

OTTO F. PUTNICK
911 First National Bank Building
Cincinnati, Ohio 45202
Phone: (513) 241-8137
Attorney for Petitioner

APPENDIX A

SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION v. COOGAN.

[Cite as Cincinnati Bar Assn. v. Coogan, 21 Ohio St. 2d.]

Attorneys at law—Misconduct warranting suspension from practice of law for indefinite period.

(D. D. No. 99—Decided March 4, 1970.)

ON CERTIFIED REPORT by the Board of Commisisoners on Grievances and Discipline.

Mr. John S. Wirthlin and *Mr. Robert L. Davis,* for relator.

Mr. Otto F. Putnick, for respondent.

Per Curiam. The relator, the Cincinnati Bar Association, filed the complaint in this matter on October 9, 1967.

The respondent, James H. Coogan, is 32 years old and was admitted to the Ohio Bar in 1961.

The respondent's first answer to the complaint raised the question of mental illness as a defense and, therefore, a hearing upon the complaint was delayed.

A doctor examined the respondent and made a report, dated April 29, 1968, as follows:

"It is not possible on the basis of this examination to make a diagnosis of any mental illness which would be of significance under Section 5122.01 (A), Revised Code. * * * at present, Mr. Coogan is not disabled by illness to an extent of making him incapable of his regular work."

On February 19, 1969, a letter was received from Dr. Charles D. Feuss, a psychiatrist, who was treating the respondent. That letter concluded as follows:

"There is no psychiatric reason for Mr. Coogan not to resume the practice of law."

A hearing was held on July 8, 1969.

The Board of Commissioners on Grievances and Discipline found that the testimony presented substantiated the first complaint. This complaint alleged that the respondent had undertaken to represent one Edward Hallas, who was a defendant in an eviction proceeding. The board found that the defendant had a valid one-year lease and probably should not have been evicted.

The respondent and counsel for the plaintiff in the eviction proceeding agreed to dismiss the case. However, plaintiff, acting on his own, refused to dismiss the case and the judge overruled the defendant's motion to dismiss the case.

The matter was heard by the court on the testimony of the plaintiff and, in the absence of the defendant and defendant's counsel, judgment was rendered for the plaintiff.

When this came to the attention of the defendant Hallas, he contacted the respondent and was assured that the respondent had filed a motion to set aside the judgment and that the case would be heard on its merits, with all parties present. Thereafter the defendant was advised by the Municipal Court that no motion for a new trial, or to set aside the judgment, had ever been filed by the respondent, that the judgment in the eviction matter was final and that no appeal had been filed by the respondent. The defendant was forcibly removed from his residence and compelled to seek other shelter and to place his children in different schools. The defendant made every possible effort to reach respondent, but failed because respondent refused to meet with defendant, refused to return defendant's telephone calls, refused to answer

any letters sent to him and refused to take any action to represent his client, the defendant.

The board concluded that "* * * it was clear that respondent neglected or failed to do anything to correct the situation, failed to adequately represent his client's interest, failed or refused to meet with his client, to answer his calls and letters and completely ignored his client's plight. * * * we find that respondent did violate Canon Number 21 of the Canons of Professional Ethics."

The board found that the testimony substantiated the second charge. The board's findings and the testimony with regard to the second complaint is reported as follows:

"* * * Respondent acted as attorney for the guardian in the Estate of Clara Davis. The estate consisted of assets with an approximate value of one hundred eighty-five thousand dollars ($185,000). Twenty-eight (28) days after the appointment of the guardian and five (5) days after the filing of the inventory, the respondent, on behalf of the guardian and himself, filed an application for authority to pay guardian's fees and attorney fees. An entry was made authorizing guardian's fees in the amount of seven thousand five hundred dollars ($7,500) and attorney fees of the same amount. The guardian and attorney received fees of five thousand dollars ($5,000). The respondent, in his answer, alleged that the court referee set the fee. (The referee, one Lawrence W. Hunt, had died several months before this hearing.) However, an affidavit of Mr. Hunt, taken in January, 1967, indicated that respondent had, on September 7, 1966, presented to him an application and entry for the payment of a guardian's fee and attorney's fee. Among other things, the affidavit related that respondent had stated to Hunt that the ward, her granddaughter and the granddaughter's husband had agreed that the guardian's fee and the at-

torney's fee should be seven thousand five hundred dollars ($7,500) each. The affidavit further related that in reliance on respondent's representations, the application and entry were approved for fees of seven thousand five hundred dollars ($7,500) for the guardian and the seven thousand five hundred dollars ($7,500) for the attorney for services thus far rendered and to be rendered in the estate.

Although there may have been a dispute as to who recommended that the guardian's and attorney's fees be paid, there is no dispute, in respondent's answer, the testimony offered and the records of the Probate Court that the original entry regarding fees was set aside, that substantially lower fees were approved by the court and that the guardian was ordered to reimburse the estate for the excess fees paid over those allowed. The facts are further undisputed, by answer or the testimony, that respondent has neglected to abide by the order of the court, has taken no steps whatsoever to contest the order of the court, and has allowed his client, the guardian, to personally reimburse the estate with all the fees paid the guardian and an additional two thousand dollars ($2,000) from guardian's personal funds. The guardian, in effect, has been required to reimburse the estate two thousand five hundred dollars ($2,500) of his own fee and four thousand five hundred dollars ($4,500) of the fee paid to and retained by the respondent. In addition, the respondent has refused and/or ignored all requests by the guardian and/or the court to reimburse the guardian and/or the estate for these excessive fees paid respondent; has refused to talk to the guardian, the court or anyone else and has avoided all efforts to contact respondent.

The testimony and evidence further showed that the guardian has acted as a guardian on only one (1) previous occasion, was relatively unfamiliar with guardianship legal

matters, had been requested by the next of kin to act as guardian and had relied completely on the advice and counsel of the respondent in matters relating to the guardianship, including the matter of fees. The guardian further respondent to and obeyed the subsequent orders of the court, has repaid to the estate all of the monies paid to him plus two thousand dollars ($2,000) of his personal funds.

The Board of Commissioners on Grievances and Discipline found that the respondent violated Canon 11 in that, for his own personal benefit and gain, he abused the confidence imposed in him by his client. The board found further that the respondent violated Canons 21 and 32.

The recommendation of the Board of Commissioners on Grievances and Discipline is:

"* * * the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio recommends that the respondent, James H. Coogan, be suspended indefinitely from the practice of law pursuant to Section 6 (b) of Rule XVIII of the Disciplinary Procedure of the Supreme Court of Ohio."

Respondent's objections to the recommendation of the board is confirmed and the respondent is suspended from the practice of law for an indefinite period.

Report confirmed and judgment accordingly.

TAFT, C. J., O'NEILL, SCHNEIDER, HERBERT, DUNCAN and CORRIGAN, JJ., concur.

MATTHIAS, J., not participating.

APPENDIX B

THE SUPREME COURT OF THE STATE OF OHIO

Of the Term of January, 1970
To-wit: March 4, 1970
DD No. 99

THE STATE OF OHIO, :
: SS
City of Columbus. :

THE CINCINNATI BAR ASSOCIATION,
Relator,

v.

JAMES H. COOGAN,
Respondent.

ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

It appearing to the Court that the Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on October 30, 1969, recommending that the respondent, James H. Coogan, should be indefinitely suspended from the practice of law pursuant to Section 6 (b) of Rule XVIII of the Supreme Court of Ohio; and it further appearing that respondent filed

objections to the Final Report of the Board of Commissioners on Grievances and Discipline, this cause was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court that the Final Report of the Board of Commissioners on Grievances and Discipline be, and the same hereby is, confirmed and the respondent, James H. Coogan, is indefinitely suspended from the practice of law.

The respondent, James H. Coogan, is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he is hereby divested of each, any and all of the rights, privileges and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that the respondent, James H. Coogan, surrender his Certificate of Admission to Practice to the Clerk of this Court forthwith and that his name be stricken from the roll of attorneys maintained by this Court.

It is further ordered that the respondent, James H. Coogan, pay the costs of these proceedings taxed in the amount of Six Hundred Thirty Dollars and forty-seven cents ($630.47).

It is further ordered that the Clerk of this Court issue certified copies of this entry as provided for in Section 19, Rule XVIII of the Rules of Practice of this Court.

APPROVED: /s/ KINGSLEY TAFT, CHIEF JUSTICE

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. 50.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 4th day of March, 1970.

THOMAS L. STARTZMAN
CLERK
/s/ SAM F. ADKINS, DEPUTY

APPENDIX C

BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

CASE NO. 126

IN RE:
COMPLAINT AGAINST:

JAMES H. COOGAN,

Respondent,

CINCINNATI BAR ASSOCIATION,

Relator.

FINDINGS OF FACT AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

(Filed October 29, 1969)

FINDINGS OF FACT

This matter came on for hearing July 8, 1969, before the duly appointed Hearing Panel of the Board of Commissioners on Grievances and Discipline, on the Complaint of the Relator and Answer of the Respondent.

John S. Wirthlin, Esquire, and Robert L. Davis, Esquire, appeared as counsel for the Relator. Otto F. Putnick, Esquire, appeared as counsel for the Respondent. Re-

spondent failed to appeal although he had been duly notified of the hearing, had conversed with his counsel two (2) days before the time set for the hearing, and had been informed by his counsel of the hearing.

Inasmuch as it has taken nearly two (2) years for this matter to come before this Board, the Panel feels that the Board should have an explanation as to the reason for the delay, and, at the same time, an insight into the background of the Respondent. The Respondent is thirty-two (32) years old and was admitted to the Ohio Bar in 1961. Respondent had apparently practiced alone since admission.

The Complaint in this matter was filed October 9, 1967. The Answer of Respondent, prepared by the Respondent and written in narrative form, was filed with the Court on November 15, 1967, and a Hearing Panel appointed. A hearing was set for January 24, 1968, in Cincinnati. Since the Answer of Respondent raised the question of mental illness as a defense, Relator filed a Motion to compel a physical examination for the Respondent under Section 9, Subsection (d) of Rule XVIII of the Rules of the Supreme Court. The hearing for January 24, 1968, was continued. The Respondent was examined by Robert W. Buckley, M.D. and a report filed by the doctor on April 29, 1968. The diagnosis of the doctor is as follows:

> "It is not possible on the basis of this examination to make a diagnosis of any mental illness which would be a significance under § 5122.01, Revised Code. The psychiatric term to be applied in this case is that of 'passive-aggressive personality trait disturbance' which is not in itself an illness. It would appear that some benefit has been obtained by treatment by Doctor Feuss, and that, at present, Mr. Coogan is not disabled by illness to an extent of making him incapable of his regular work."

Upon receipt of this report, a new hearing date was set for June 17, 1968. On June 10, 1968, Relator, Cincinnati Bar Association, asked for a continuance of the hearing in the hope that the matter could be resolved at the local level. It was reported that the Respondent was not actively practicing law, had no office and there was some possibility of an agreement for a voluntary suspension for a period of time. The hearing set for June 17, 1968 was continued indefinitely. Thereafter, on February 19, 1969, the following letter from a Doctor Charles D. Feuss, the psychiatrist treating the Respondent, was filed:

> "I reappraised Mr. James Coogan's emotional condition. I find him free from neurotic anxiety, his judgment is not impaired and his behavior patterns are appropriate.
>
> "There is no psychiatric reason for Mr. Coogan not to resume the practice of law.
>
> "Sincerely,
> "Charles D. Feuss, Jr., M.D."

The Respondent then appeared at a meeting of the Grievance Committee of the Cincinnati Bar Association. The Committee reported that the Respondent had apparently regained his composure, had resumed the practice of law and said that he (the Respondent) expected to make restitution of any monies that he was required to refund. The Bar Association requested advice as to what they should do under these circumstances. The Committee was advised by this Court to proceed to a hearing on the charges and to fully process the case to a proper conclusion under the Supreme Court Rules.

Since William Summers, Chairman of the original panel, had died in the interim, and the terms of the other two (2) members of the panel had expired, a new panel was appointed and a hearing date set for July 8, 1969.

Specification Number 1 of the Complaint in essence alleges that the Respondent undertook to represent one Edward Hallas, who was a defendant in an eviction proceeding. Respondent and counsel for the plaintiff in the eviction proceeding agreed to dismiss the case. However, plaintiff, acting on his own, refused to dismiss the case and the judge dismissed the motion to dismiss the case. The matter was thereupon heard by the Court on the testimony of the plaintiff and, in the absence of counsel and the defendant, judgment was rendered for the plaintiff. When this came to the attention of the defendant, Hallas, he contacted the Respondent and was assured that Respondent had filed a motion to set aside the judgment and the case would be heard on its merits with all parties present. Thereafter, the defendant was advised by the Municipal Court that no motion for a new trial or to set aside the judgment had ever been filed by the Respondent, that the judgment in the eviction matter was final and that no appeal had been filed by Respondent. Thereafter, the defendant was forcibly removed from his residence, had to seek other shelter and to place his children in different schools. Defendant had made every effort to reach Respondent but all had failed because Respondent refused to meet with the defendant, refused to return defendant's telephone calls, refused to answer any letters sent to him or to take any action to represent the client. Because of this, it was alleged that Respondent was in violation of Canons Number 21 and 29.

Specification Number 2 alleges that Respondent, as an attorney, made application to the Probate Court of Hamilton County for the appointment of one Costello as the Guardian of the Estate of Clara Davis, an incompetent. On August 10, 1966, Mr. Costello was appointed Guardian. On September 2, 1966, the Guardian's Inventory was filed.

On September 7, 1966, Respondent presented an application for authority to pay Guardian's and Attorney fees. Relying on the representations of the Respondent that the requested fee of Seven Thousand Five Hundred Dollars ($7,500.00) for the attorney had been agreed upon by all parties, the Reference of the Probate Court allowed the fee requested. Thereafter, the Guardian paid himself Five Thousand Dollars ($5,000.00) and the Respondent, as attorney, the sum of Five Thousand Dollars ($5,000.00).

On November 29, 1966, the Probate Court, on its own motion, set aside the application and entry for Guardian's and Attorney's fees previously entered. On January 27, 1967, the Court entered an order fixing Guardian's fees at Two Thousand Five Hundred Dollars ($2,500.00) and the fee for Respondent, as attorney for the Guardian, at Five Hundred Dollars ($500.00). The Court then ordered the Guardian to return all monies representing fees in excess of Three Thousand Dollars ($3,000.00), or a total of Seven Thousand Dollars ($7,000.00) to be returned. The order of the Court setting aside the initial allowance of fees was ignored by the Respondent and all efforts by the Court and the Guardian to communicate with Respondent were ignored or unanswered. The Respondent failed to return any monies to the estate or the Guardian. Pursuant to the Court order, the Guardian was compelled to return the Five Thousand Dollars ($5,000.00), paid to him as Guardian and an additional Two Thousand Dollars ($2,000.00) from the Guardian's personal funds. Subsequent efforts by the Guardian to be reimbursed by the Respondent were ignored. As a result of the above, it was alleged that Respondent had violated Canons Number 11 and 22.

At the outset, there was a question as to whether Mr. Putnick was, at the time of this hearing, counsel for the

Respondent. The Answer of the Respondent had been prepared and filed by the Respondent without assistance of counsel. Thereafter, Respondent had retained Mr. Putnick to represent him in the matter. As of two (2) days before this hearing, the Respondent had conversed with his counsel and although Respondent had failed to keep an appointment with counsel on the day before the hearing, he had not discharged his counsel nor indicated that Mr. Putnick would not represent him. On these facts, it appeared to the panel that Mr. Putnick was the counsel for the Respondent, had not been relieved of his responsibility as counsel by the Respondent and that he should be permitted to act as counsel for the Respondent in this hearing.

The testimony presented in support of Specification Number 1 substantiated that charge. The Respondent had undertaken to represent one Hallas who was the defendant in an eviction proceeding. The defendant had a valid one (1) year lease and probably should not have been evicted. While making no attempt to judge the merits of that action and admitting that Respondent might not be to blame for the confusion that arose when judgment was rendered despite counsel's agreement on a dismissal, it was clear that Respondent neglected or failed to do anything to correct the situation, failed to adequately represent his client's interest, failed or refused to meet with his client, to answer his calls and letters and completely ignored his client's plight. In respect to Specification Number 1, we find that Respondent did violate Canon Number 21 of the Canons of Professional Ethics.

The testimony presented in support of Specification Number 2 substantiated that charge. Respondent had acted as attorney for the Guardian in the Estate of Clara Davis. The estate consisted of assets with an approxi-

mate value of One Hundred Eighty-five Thousand Dollars ($185,000.00). Twenty-eight (28) days after the appointment of the Guardian and five (5) days after the filing of the inventory, the Respondent, on behalf of the Guardian and himself, filed an application for authority to pay Guardian's fees and Attorneys fees. An entry had been made authorizing Guardian's fees in the amount of Seven Thousand Five Hundred Dollars ($7,500.00) and Attorney fees of the same amount. The Guardian and attorney had received fees of Five Thousand Dollars ($5,000.00). The Respondent, in his Answer, alleged that the Court Referee had set the fee. (The Referee, one Lawrence W. Hunt, had died several months before this hearing.) However, an Affidavit of Mr. Hunt, taken in January, 1967, indicated that Respondent had, on September 7, 1966, presented him an Application and Entry for the payment of a Guardian's fee and Attorney's fee. Among other things, the Affidavit related that Respondent had stated to Hunt that the ward, her granddaughter and the granddaughter's husband had agreed that the Guardian's fee and the Attorney's fee should be Seven Thousand Five Hundred Dollars ($7,500.00) each. The Affidavit further related that, in reliance on Respondent's representations, the Application and Entry had been approved for Fees of Seven Thousand Five Hundred Dollars ($7,500.00) for the Guardian and the Seven Thousand Five Hundred Dollars ($7,500.00) for the Attorney for services thus far rendered and to be rendered in the estate.

Although there may have been a dispute as to who recommended the Guardian's and Attorney's fee to be paid, there is no dispute, either in Respondent's Answer, the testimony offered and the records of the Probate Court that the original Entry regarding fees had been set aside, that substantially lower fees had been approved

by the Court and that Guardian had been ordered to reimburse the estate for the excess fees paid over those allowed. The facts are further undisputed, by answer or the testimony, that Respondent has neglected to abide by the order of the court, has taken no steps whatsoever to contest the order of the court, and has allowed his client, the Guardian, to personally reimburse the estate with all the fees paid the Guardian and an additional Two Thousand Dollars ($2,000.00) from Guardian's personal funds. The Guardian, in effect, has been required to reimburse the estate Two Thousand Five Hundred Dollars ($2,500.00) of his own fee and Four Thousand Five Hundred Dollars ($4,500.00) of the fee paid to and retained by the Respondent. In addition, the Respondent has refused and/or ignored all requests by the Guardian and/or the court to reimburse the Guardian and/or the estate for these excessive fees paid Respondent, has refused to talk to the Guardian, the court or anyone else and has avoided all efforts to contact Respondent.

The testimony and evidence further showed that the Guardian, Mr. Costello, an Assistant Vice President of the First National Bank of Cincinnati, had acted as a Guardian on only one (1) previous occasion, was relatively unfamiliar with guardianship legal matters, had been requested by the next of kin to act as Guardian and had relied completely on the advice and counsel of the Respondent in matters relating to the guardianship, including the matter of fees. The Guardian further responded to and obeyed the subsequent orders of the court, has repaid to the estate all of the monies paid to him plus Two Thousand Dollars ($2,000.00) of his personal funds.

The Board of Commissioners on Grievances and Discipline therefore finds that the Respondent did violate Canon 11 in that he has, for his personal benefit and gain, abused

and taken advantage of the confidence reposed in him by his client. We further find that Respondent has, by his conduct, violated Canons 21 and 32.

CONCLUSIONS

The recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio is based, in part, on a report from a psychiatrist received after the hearing. By agreement between counsel for the Relator and counsel for the Respondent, the deposition of Dr. Charles D. Feuss, the psychiatrist attending the Respondent, would be taken and submitted to the Panel at a later date. In lieu thereof, the following report, stipulated by counsel for both parties, was submitted by Dr. Feuss:

"CHARLES D. FEUSS, JR., M. D.

250 Wm. Howard Taft Road
Cincinnati, Ohio 45219

Phone 221-5065

"July 23, 1969

"Mr. O. F. Putnick, Atty.
First National Bank Building
Cincinnati, Ohio 45202

Re: James Coogan

"Dear Sir:

"On October 26, 1965 I first saw Mr. James Coogan who was referred to me by Dr. Bert McBride for his extreme phobic condition. Mr. Coogan practically panicked in the office.

"The history was one of a man of low middle income family, devoid of professionals, who did well in college

and law school despite the deriding of his family for overstepping his background. Mr. Coogan over-compensated for this when first graduating. He became expansive in his tastes and life style; with the first reversal in his pattern his family ridiculed and humiliated him so that he developed extreme phobic reactions. He became panicky when there were people around and developed syncope and this was followed by tachycardia when attempting to enter the court house. His behavior became one of a recluse, staying in his parents home, living on a meager allowance and not coming out except at night.

"The family history showed a similar break in his father previously, making it impossible for the father to rise above his background and becoming very dependent.

"With medication and prolonged treatment Mr. Coogan became better. This was interrupted by periods of panic when he could not get to the office. I felt that we were quite successful in therapy when I wrote you the letter of 2/19/69.

"With Mr. Coogan's improvement his family situation again became intolerable but with supportive therapy he overcame this: again appearing to slightly over-compensate with extreme optimism.

"Apparently when a hearing was unexpectedly called Mr. Coogan again went into his flight reaction and I have been unable to even get him back to the office.

"My diagnosis of this man is anxiety reaction with extreme phobic reaction. Prognosis should be good excepting for external pressures and family pressures reappearing before he had been able to crystalize his recovered state.

"Sincerely,
Charles D. Feuss, Jr., M. D.
CHARLES D. FEUSS, JR., MD."

RECOMMENDATION

In view of the foregoing Findings of Fact, conclusions, and medical reports, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio recommends that the Respondent, James H. Coogan, be suspended indefinitely from the practice of law pursuant to Section 6 (b) of Rule XVIII of the Disciplinary Procedure of the Supreme Court of Ohio.

/s/ ROBERT F. EBINGER
Chairman, Board of Commissioners
on Grievances and Discipline of
The Supreme Court of Ohio

/s/ WILLIAM D. RADCLIFF
Secretary, Board of Commissioners
on Grievances and Discipline of
The Supreme Court of Ohio

APPENDIX D

BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

CASE NO. 126
DD No. 99

(TITLE OMITTED)

OBJECTIONS TO FINDINGS OF FACT AND RECOMMENDATION

1. Respondent objects to the findings of fact and recommendation of the Commission for the reason that said findings and recommendation are contrary to and in violation of a written agreement entered into between Relator and Respondent, which agreement was complied with in every respect by Respondent, and a copy of which is attached hereto.

2. Respondent objects to the recommendation of the Commission for the reason that said recommendation is contrary to the provisions of 4705.02 O.R.C. in that no mention of "moral turpitude" is mare in either the complaint or the findings of fact.

> In the absence of clear and convincing evidence that an attorney has done any act whereby he can be successfully charged with statutory moral turpitude, the court is without power to either suspend, reprimand, or remove him: In re Chappel, 120. O. 499

/s/ JAMES H. COOGAN
2304 Kroger Building
Cincinnati, Ohio 45202

(LETTERHEAD OF GOLDMAN, COLE & PUTNICK)

July 15, 1968

Robert Dennis, Esq.
Chairman, Grievance Committee
Cincinnati Bar Association
907 Central Trust Bank Tower
Cincinnati, Ohio 45202

Re: James Coogan

Dear Bob:

Pursuant to our numerous telephone conversations and meetings in reference to the above named James Coogan, the following agreement is submitted summarizing our respective activities and conclusions in reference to this matter.

1] The complaint of the Bar Association has been dismissed and it is agreed that; absent any further complaints, the same will not be refiled.

2] James Coogan voluntarily surrenders for safekeeping his certificate and license to practice in the State of Ohio for a period of not less than six (6) months from the date hereof and agrees with the surrendering that he will not practice law in the State of Ohio or any other state, nor will he hold himself out as a lawyer to the public for the accepting of or handling of any legal business.

3] It is agreed that any matters that James Coogan presently is handling he may complete or refer to other lawyers for completion and for any other interim matters which may demand attention.

4] James Coogan agrees to continue to receive treatment for his medical problems and agrees that he will submit or authorize the submission of reports of his attending physicians to the committee at the end of the aforesaid six (6) month period, at which time it will be determined whether or not he may resume the public practice of law. It is agreed that if the doctors certify that the existing medical problems have been relieved he may resume the practice at the end of the six (6) month period in accordance with these medical reports.

Respectfully submitted,

Otto F. Putnick

I, James Coogan, have read the foregoing and hereby agree to all the terms and provisions thereof.

.....